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VB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/251,570	02/17/99	WINKEL	MXI-101

000959  
LAHIVE & COCKFIELD  
28 STATE STREET  
BOSTON MA 02109

HM22/0331

EXAMINER
DECLoux, R

ART UNIT	PAPER NUMBER
1644	5

DATE MAILED: 03/31/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/251,570

Applicant(s)

Van De Winkel

Examiner  
DeCloux, Amy

Group Art Unit  
1644



☐ Responsive to communication(s) filed on \_\_\_\_\_

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-25 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-25 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

### DETAILED ACTION

1. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-21, drawn to a method of selectively reducing the number or activity of macrophages comprising contacting the macrophages with an agent which binds to an Fc receptor, classified in Class 424, subclasses 144.1 and 184.1,

II. Claims 22-25, drawn to a method of diagnosing a disease characterized by aberrant numbers or activity of macrophages, classified in Class 435, subclasses 7.2 and 7.1.

2. Inventions I and II are different methods. Invention I, drawn to a method of selectively reducing the number or activity of macrophages, and Invention II, drawn to a method of diagnosing a disease characterized by aberrant numbers or activity of macrophages, are different methods because they have different endpoints and require different process steps. Therefore, these methods require distinct searches and are patentably distinct.

3. Because Inventions I and II are distinct for the reasons given above, and they have acquired a separate status in the art because the searches are not co-extensive and encompass divergent subject matter, restriction for examination purposes as indicated is proper.

4. Irrespective of whichever group the applicant may elect, the applicant is further required under 35 U.S.C. 121: *5-9.00*

To elect a **specific Fc receptor**: such as FcγRI (CD64), FcγRII (CD32), FcγRIII (CD16), or IgA receptor FcαR(CD89).

To elect a **specific disease**: such as psoriasis, atopic dermatitis, scleroderma, cutaneous lupus erythematosus, Human Immunodeficiency Virus infection, multiple sclerosis, rheumatoid arthritis, Chronic Polymorphic Light Dermatitis, Chronic Obstructive Pulmonary Diseases and Wegener's Granulomatosis.

If Group I is elected, the applicant is further required;

To elect a **specific monoclonal antibody**, that is reactive with the elected Fc receptor as outlined supra.

5. The species are distinct each from the other for the following reasons:

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The recited Fc receptors have different biochemical structures and thus have different properties and characteristics.

The recited diseases are different diseases, with different etiologies, clinical presentations and treatment modalities.

Monoclonal antibodies with specificity to different Fc receptors have different biochemical structures and thus have different properties and characteristics.

6. Applicant is required, in response to this action, to elect a specific species to which the claims shall be restricted if no generic claim is finally held to be allowable. The response must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

7. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

8. The following claim(s) are generic: Claims 1 and 22.

9. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy DeCloux whose telephone number is (703) 306-5821. The examiner can normally be reached Monday through Friday from 9:00 am to 6:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

**Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-305-3704. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot Program. If you have any questions or suggestions, please contact Paula Hutzell, Supervisory Patent Examiner

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at paula.hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.

Amy DeCloux, Ph.D.  
Patent Examiner  
Group 1640  
Technology Center 1600  
March 29, 2000



DAVID SAUNDERS  
PRIMARY EXAMINER  
ART UNIT 182-1644



# RESTRICTION ELECTION FACSIMILE TRANSMISSION

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\_\_\_\_\_

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